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NOTE: CHANGES MADE BY THE COURT

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KENNETH NAIL, an individual,

Plaintiff,

v.

CARS.COM, LLC, a Illinois corporation;
and DOES 1-50, inclusive,

Defendants.

Case No. 8:18-cv-00930-JLS (JPRx)

STIPULATED PROTECTIVE ORDER

Complaint Filed: April 17, 2018
Final Pretrial Conf.: July 26, 2019
Trial Date: To Be Set

1 IT IS HEREBY STIPULATED by and between Plaintiff Kenneth Nail (“Plaintiff”)
2 and Defendant Cars.com, LLC (“Defendant”) (together, the “Parties”), by and through
3 their respective counsel of record, that in order to facilitate the exchange of information
4 and documents which may be subject to confidentiality limitations on disclosure due to
5 federal laws, state laws, and privacy rights, the Parties stipulate as follows:

6 1. A. PURPOSES AND LIMITATIONS

7 Discovery in this action is likely to involve production of confidential, proprietary,
8 or private information for which special protection from public disclosure and from use
9 for any purpose other than prosecuting this litigation may be warranted. Accordingly, the
10 Parties hereby stipulate to and petition the Court to enter the following Stipulated
11 Protective Order. The Parties acknowledge that this Order does not confer blanket
12 protections on all disclosures or responses to discovery and that the protection it affords
13 from public disclosure and use extends only to the limited information or items that are
14 entitled to confidential treatment under the applicable legal principles. The Parties
15 further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective
16 Order does not entitle them to file confidential information under seal; Civil Local Rule
17 79-5 sets forth the procedures that must be followed and the standards that will be applied
18 when a party seeks permission from the court to file material under seal.

19 B. GOOD CAUSE STATEMENT

20 This action is likely to involve private personal information, trade secrets, and
21 other valuable commercial, financial, and/or proprietary information for which the parties
22 believe special protection from public disclosure and from use for any purpose other than
23 prosecution of this action is warranted. Such confidential and proprietary materials and
24 information may consist of, among other things, confidential business or financial
25 information, information regarding confidential business practices, or other confidential
26 research, development, or commercial information (including information implicating
27 privacy rights of third parties), information otherwise generally unavailable to the public,
28 or which may be privileged or otherwise protected from disclosure under state or federal

1 statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow
2 of information, to facilitate the prompt resolution of disputes over confidentiality of
3 discovery materials, to adequately protect information the parties believe they are entitled
4 to keep confidential, to ensure that the parties are permitted reasonable necessary uses of
5 such material in preparation for trial, to address their handling at the end of the litigation,
6 and serve the ends of justice, a protective order for such information is justified in this
7 matter. It is the intent of the parties that information will not be designated as
8 confidential for tactical reasons and that nothing be so designated without a good faith
9 belief that it has been maintained in a confidential, non-public manner, and there is good
10 cause why it should not be part of the public record of this case.

11 2. DEFINITIONS

12 2.1. Action: The action originally filed on April 17, 2018, in Orange County
13 Superior Court, Case No. 30-2018-00986539-CU-WT-CJC, and removed to this Court on
14 May 30, 2018, Case No. 8:18-cv-00930-JLS (JPRx). (Dkt. #1, Ex. A.)

15 2.2. Challenging Party: a Party or Non-Party that challenges the designation of
16 information or items under this Order.

17 2.3. “CONFIDENTIAL” Information or Items: information (regardless of how it
18 is generated, stored or maintained) or tangible things that qualify for protection under
19 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
20 Statement.

21 2.4. Counsel: Outside Counsel of Record and House Counsel (as well as their
22 support staff).

23 2.5. Designating Party: a Party or Non-Party that designates information or
24 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

25 2.6. Disclosure or Discovery Material: all items or information, regardless of the
26 medium or manner in which it is generated, stored, or maintained (including, among
27 other things, testimony, transcripts, and tangible things), that are produced or generated in
28 disclosures or responses to discovery in this matter.

1 2.7. Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
3 expert witness or as a consultant in this Action.

4 2.8. House Counsel: attorneys who are employees of a party to this Action.
5 House Counsel does not include Outside Counsel of Record or any other outside counsel.

6 2.9. Non-Party: any natural person, partnership, corporation, association, or
7 other legal entity not named as a Party to this action.

8 2.10. Outside Counsel of Record: attorneys who are not employees of a party to
9 this Action but are retained to represent or advise a party to this Action and have
10 appeared in this Action on behalf of that party or are affiliated with a law firm which has
11 appeared on behalf of that party, and includes support staff.

12 2.11. Party: any party to this Action, including all of its officers, directors,
13 employees, consultants, retained experts, and Outside Counsel of Record (and their
14 support staffs).

15 2.12. Producing Party: a Party or Non-Party that produces Disclosure or
16 Discovery Material in this Action.

17 2.13. Professional Vendors: persons or entities that provide litigation support
18 services (e.g., photocopying, videotaping, translating, preparing exhibits or
19 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
20 their employees and subcontractors.

21 2.14. Protected Material: any Disclosure or Discovery Material that is designated
22 as "CONFIDENTIAL."

23 2.15. Receiving Party: a Party that receives Disclosure or Discovery Material
24 from a Producing Party.

25 3. SCOPE

26 The protections conferred by this Stipulation and Order cover not only Protected
27 Material (as defined above), but also (1) any information copied or extracted from
28 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected

1 Material; and (3) any testimony, conversations, or presentations by Parties or their
2 Counsel that might reveal Protected Material.

3 Any use of Protected Material at trial shall be governed by the orders of the trial
4 judge. This Order does not govern the use of Protected Material at trial.

5 4. DURATION

6 Even after final disposition of this litigation, the confidentiality obligations
7 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in
8 writing or a court order otherwise directs. Final disposition shall be deemed to be the
9 later of (1) dismissal of all claims and defenses in this Action, with or without prejudice;
10 and (2) final judgment herein after the completion and exhaustion of all appeals,
11 rehearings, remands, trials, or reviews of this Action, including the time limits for filing
12 any motions or applications for extension of time pursuant to applicable law.

13 5. DESIGNATING PROTECTED MATERIAL

14 5.1. Exercise of Restraint and Care in Designating Material for Protection. Each
15 Party or Non-Party that designates information or items for protection under this Order
16 must take care to limit any such designation to specific material that qualifies under the
17 appropriate standards. The Designating Party must designate for protection only those
18 parts of material, documents, items, or oral or written communications that qualify so that
19 other portions of the material, documents, items, or communications for which protection
20 is not warranted are not swept unjustifiably within the ambit of this Order.

21 Mass, indiscriminate, or routinized designations are prohibited. Designations that
22 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
23 to unnecessarily encumber the case development process or to impose unnecessary
24 expenses and burdens on other parties) may expose the Designating Party to sanctions.

25 If it comes to a Designating Party's attention that information or items that it
26 designated for protection do not qualify for protection, that Designating Party must
27 promptly notify all other Parties that it is withdrawing the inapplicable designation.
28

1 5.2. Manner and Timing of Designations. Except as otherwise provided in this
2 Order (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
3 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
4 must be clearly so designated before the material is disclosed or produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (*e.g.*, paper or electronic documents,
7 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
8 Producing Party affix at a minimum, the legend “CONFIDENTIAL” (hereinafter
9 “CONFIDENTIAL legend”), to each page that contains protected material. If only a
10 portion or portions of the material on a page qualifies for protection, the Producing Party
11 also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings
12 in the margins).

13 A Party or Non-Party that makes original documents available for inspection need
14 not designate them for protection until after the inspecting Party has indicated which
15 documents it would like copied and produced. During the inspection and before the
16 designation, all of the material made available for inspection shall be deemed
17 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
18 copied and produced, the Producing Party must determine which documents, or portions
19 thereof, qualify for protection under this Order. Then, before producing the specified
20 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page
21 that contains Protected Material. If only a portion or portions of the material on a page
22 qualifies for protection, the Producing Party also must clearly identify the protected
23 portion(s) (*e.g.*, by making appropriate markings in the margins).

24 (b) for testimony given in depositions that the Designating Party identify the
25 Disclosure or Discovery Material on the record, before the close of the deposition all
26 protected testimony.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend “CONFIDENTIAL.” If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1. Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court’s Scheduling Order.

6.2. Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 37.1 *et seq.*

6.3. The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party’s designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1. Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must

1 comply with the provisions of section 13 below (FINAL DISPOSITION).

2 Protected Material must be stored and maintained by a Receiving Party at a
3 location and in a secure manner that ensures that access is limited to the persons
4 authorized under this Order.

5 7.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
6 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
7 may disclose any information or item designated “CONFIDENTIAL” only to:

8 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
9 employees of said Outside Counsel of Record to whom it is reasonably necessary to
10 disclose the information for this Action;

11 (b) the officers, directors, and employees (including House Counsel) of the
12 Receiving Party to whom disclosure is reasonably necessary for this Action;

13 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
14 is reasonably necessary for this Action and who have signed the “Acknowledgment and
15 Agreement to Be Bound” (Exhibit A);

16 (d) the court and its personnel;

17 (e) court reporters and their staff;

18 (f) professional jury or trial consultants, mock jurors, and Professional Vendors
19 to whom disclosure is reasonably necessary for this Action and who have signed the
20 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

21 (g) the author or recipient of a document containing the information or a
22 custodian or other person who otherwise possessed or knew the information;

23 (h) during their depositions, witnesses and attorneys for witnesses, in the Action
24 to whom disclosure is reasonably necessary provided: (1) the deposing party requests
25 that the witness sign the form attached as Exhibit A hereto; and (2) they will not be
26 permitted to keep any confidential information unless they sign the “Acknowledgment
27 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating
28 Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to

depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions or appointed by the Court.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order unless prohibited by law;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission or a court so orders. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

1 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
2 IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced by a Non-
4 Party in this Action and designated as "CONFIDENTIAL." Such information produced
5 by Non-Parties in connection with this litigation is protected by the remedies and relief
6 provided by this Order. Nothing in these provisions should be construed as prohibiting a
7 Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to produce
9 a Non-Party's confidential information in its possession, and the Party is subject to an
10 agreement with the Non-Party not to produce the Non-Party's confidential information,
11 then the Party shall:

12 (1) promptly notify in writing the Requesting Party and the Non-Party
13 that some or all of the information requested is subject to a confidentiality agreement
14 with a Non-Party;

15 (2) promptly provide the Non-Party with a copy of the Stipulated
16 Protective Order in this Action, the relevant discovery request(s), and a reasonably
17 specific description of the information requested; and

18 (3) make the information requested available for inspection by the Non-
19 Party, if requested.

20 (c) If the Non-Party fails to seek a protective order from this court within
21 14 days of receiving the notice and accompanying information, the Receiving Party may
22 produce the Non-Party's confidential information responsive to the discovery request. If
23 the Non-Party timely seeks a protective order, the Receiving Party shall not produce any
24 information in its possession or control that is subject to the confidentiality agreement
25 with the Non-Party before a determination by the court. Absent a court order to the
26 contrary, the Non-Party shall bear the burden and expense of seeking protection in this
27 court of its Protected Material.
28

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court provided the court so allows.

12. MISCELLANEOUS

12.1. Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2. Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

1 12.3. Filing Protected Material. A Party that seeks to file under seal any Protected
2 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
3 under seal pursuant to a court order authorizing the sealing of the specific Protected
4 Material at issue. If a Party's request to file Protected Material under seal is denied by
5 the court, then the Receiving Party may file the information in the public record unless
6 otherwise instructed by the court.

7 13. FINAL DISPOSITION

8 After the final disposition of this Action, as defined in paragraph 4, within 60 days
9 of a written request by the Designating Party, each Receiving Party must return all
10 Protected Material to the Producing Party or destroy such material. As used in this
11 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
12 summaries, and any other format reproducing or capturing any of the Protected Material.
13 Whether the Protected Material is returned or destroyed, the Receiving Party must submit
14 a written certification to the Producing Party (and, if not the same person or entity, to the
15 Designating Party) by the 60 day deadline that (1) identifies (by category, where
16 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that
17 the Receiving Party has not retained any copies, abstracts, compilations, summaries or
18 any other format reproducing or capturing any of the Protected Material.

19 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
20 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
21 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
22 consultant and expert work product, even if such materials contain Protected Material.
23 Any such archival copies that contain or constitute Protected Material remain subject to
24 this Protective Order as set forth in Section 4 (DURATION).

25 //

26 //

27 //

28 //

14. Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Pursuant to Local Rule 5-4.3.4(a)(2)(i), I, David Rosenberg, certify that all other signatories listed, on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

DATED: October 5, 2018

Respectfully submitted,
JML LAW

By: /s/ Cathryn G. Fund
Joseph M. Lovretovich
Jared W. Beilke
Cathryn G. Fund
Attorneys for Plaintiff
KENNETH NAIL

DATED: October 5, 2018

Respectfully submitted,
SEYFARTH SHAW LLP

By: /s/ David Rosenberg
Jonathan L. Brophy
David Rosenberg
Attorneys for Defendant
CARS.COM, LLC

Date: October 11, 2018


_United States Magistrate Judge _

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that
6 was issued by the United States District Court for the Central District of California on
7 [date] in the case of *Kenneth Nail v. Cars.com LLC*, Case No. 8:18-cv-00930-JLS (JPRx).
8 I agree to comply with and to be bound by all the terms of this Stipulated Protective
9 Order and I understand and acknowledge that failure to so comply could expose me to
10 sanctions and punishment in the nature of contempt. I solemnly promise that I will not
11 disclose in any manner any information or item that is subject to this Stipulated
12 Protective Order to any person or entity except in strict compliance with the provisions of
13 this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for
15 the Central District of California for the purpose of enforcing the terms of this Stipulated
16 Protective Order, even if such enforcement proceedings occur after termination of this
17 action. I hereby appoint _____ [print or type full name]
18 of _____ [print or type full address and
19 telephone number] as my California agent for service of process in connection with this
20 action or any proceedings related to enforcement of this Stipulated Protective Order.

21
22 Date: _____

23
24 City and State where sworn and signed: _____

25
26 Printed name: _____

27
28 Signature: _____

STIPULATED PROTECTIVE ORDER